



MONTGOMERY COUNTY ETHICS COMMISSION

Stuart D. Rick
Chair

Kenita V. Barrow
Vice Chair

September 23, 2013

BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion 13-08-006

You are a Commissioner for the Housing Opportunity Commission of Montgomery County (“HOC”) and have requested an opinion as to whether your solely owned business is prohibited from participating in a redevelopment project under the purview of the HOC. The Ethics Commission understands that in your capacity as an HOC member you will recuse yourself and not work on matters relating to the project.

The HOC is a public body recognized under State law for providing housing or housing projects for certain persons in the County. Md. Housing and Community Development Code Ann. § 16-101 et. seq. HOC members are, pursuant to State law requirements, nominated by the County Executive and approved by the County Council. HOC members are not compensated for their service. The HOC is an “agency or County agency” as those terms are defined in the County’s Public Ethics Law. See § 19A-4(a)(3). Pursuant to the Public Ethics Law, HOC members are “public employees” who are subject to the law. (Subparagraph 19A-4(m)(4) specifically identifies HOC members as “public employees.”)

The HOC’s Procurement Division published a solicitation for the redevelopment of an apartment complex. One of the developers bidding on the project contacted your business to participate as a subcontractor on the project. The plan was for the business to contract with the developer and not the HOC.

The County Ethics Law imposes restrictions on certain ownership and outside employment activities of public employees. In particular, § 19A-12(b)(1) provides that without a waiver:

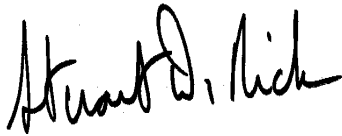
a public employee must not: (1) be employed by, or own more than one percent of, any business that: (A) is regulated by the County agency with which the public employee is affiliated; or (B) negotiates or contracts with the County agency with which the public employee is affiliated.

Montgomery County Ethics Commission

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The Law defines “employ” as “engaging in an activity for compensation,” and “employer” means “any person who pays or agrees to pay compensation for services rendered.” Under the circumstances presented here, the Commission concludes that you, being the sole owner of the business, would be “employed” by a developer that is negotiating or contracting with the HOC. Such a role is prohibited by § 19A-12. Therefore, neither you nor your business may be a subcontractor on the HOC development.¹

For the Commission:

A handwritten signature in black ink, appearing to read "Stuart D. Rick". The signature is fluid and cursive, with the first name "Stuart" being more prominent.

Stuart D. Rick
Chair

¹ An exception to the restrictions in §19A-12(b) provides that they do not apply to a member of a board, commission, or similar body in regard to employment held when the member was appointed if the employment was publicly disclosed before appointment to the appointing authority, and to the County Council when confirmation is required. Because the opportunity to be involved in the development project at issue arose after your confirmation, this limited exception could not apply here. See § 19A-12(c)(3).